IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1918 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VAJIRBHAI DOSANBHAI (DAUVA) MOMIN - Appellant(s)
Versus
THE STATE OF GUJARAT - Opponent(s)

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Appearance :
MR NK MAJMUDAR for Appellant(s) : 1,
MR HL JANI, ADDL PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 25/01/2007

ORAL JUDGMENT

1. Present appeal is filed against judgment and order dated 9.10.2006 passed by the learned Special Judge, Patan in Special (Atrocity) Case No. 46 of 2005, whereby the learned Special Judge is pleased to convict the appellant for an offence under Section 354 and 506(2) of the Indian Penal Code and Section 3(1)

(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The learned Judge is pleased to award six months rigorous imprisonment, fine of Rs.5,000/- and, in default, one month's simple imprisonment for offence under Section 354 of the Indian Penal Code.

For an offence under Section 506(2) of the Indian Penal Code, the learned Judge has awarded six months rigorous imprisonment, fine of Rs.500/- and, in default ten days' simple imprisonment.

For an offence under Section 3(1)(xi) of the Atrocity Act, six months' rigorous imprisonment, fine of Rs.5,000/- and, in default, one month's simple imprisonment is awarded.

The learned Special Judge was pleased to order that all the main sentences shall run concurrently and the accused be given set of for the period which he has undergone as an under-trial prisoner.

2. The learned advocate Mr. N.K. Majmudar vehemently submitted that the appellant is wrongly implicated by filing a false complaint. He submitted that the appellant has stated in his statement under Section 313 that "a false case is filed against him. The husband was cultivating the land of the appellant on 'crop share' basis, he had taken an advance and, with a view to see that the same is not required to be returned, a false complaint is filed".

3. The prosecution has examined the following witnesses:

PW Nos.	Name of the witnesses	Exhibit numbers
02	Victim Shardaben Rameshbhai Harijan	12
03	Rameshbhai Mevabhai Harijan	13
04	Manubhai Mevabhai Harijan	14

Learned advocate Mr. Majmudar vehemently submitted that there is contradiction in the depositions of these three witnesses and, therefore, the conviction recorded against the appellant is not tenable. He submitted that the same is required to be quashed and set aside by this Court.

He submitted that the victim has said that, 'on the day of the incident between 9.00 to 10.00 P.M., when she went to 'Tabela' (the place at which buffaloes are kept) for feeding them, the appelalnt caught hold of her hand. He hugged the victim and laid her down on the ground and outraged her modesty. At that time, she raised shouts. Hearing the shouts, her husband and younger brother of her husband came running'. She also deposed that, 'while she was shouting, the appellant told her that he is ready to give any amount she demands if she allows him to fulfill his desire'. She has further deposed that, 'when her husband reached there, she told him about the incident'. The appellant told her husband that, 'if he speaks anything, he will kill him by cutting into pieces'. It is further deposed by the victim

that, 'thereafter, on that very night, they left that place and went to their village'.

4. The learned advocate for the appellant submitted that, as against this, the husband has deposed that, 'on hearing the shouts of his wife, he reached there running. His brother also came running'. He has deposed that, 'his brother was ahead of him; that when he reached there, the appellant was present by the side of the victim and was catching hold of the 'Chaniya' (peticot). On seeing the husband of the victim, the appellant released the peticot of the victim.' The witness has deposed that, 'the victim informed him that the old men had hugged her'. He has also deposed that, 'the appellant had threatened the witness by saying that 'if he informs anybody he will kill him'.

5. PW 4 Manubhai Mevabhai Harijan, younger brother of the husband of the victim has deposed that he was in the hut and was repairing radio. On hearing the shouts of the victim, he went running there. His brother was ahead and he was next there. He has stated that the appellant was holding the hand of the victim and they were talking. When he told the appellant that he should not have done this, he was also threatening that first run away or else I kill you.

6. The learned advocate for the appellant submitted that the contradictions on the point, who reached the place first, whether the husband of the victim or the

younger brother of the husband of the victim, goes to the root of the matter. He submitted that, in light of this contradiction, the evidence of these two witnesses ought not to have been believed.

In the opinion of this Court, this minor contradiction on the point of reaching of these two witnesses on the scene of offence does not dismantle the case of the prosecution. On appreciating the totality of the case, there is sufficient evidence to hold the accused guilty. The deposition of the victim is found to be natural and consistent. There is no reason to disbelieve the victim which completely supports the case of the prosecution. The learned Special Judge, while appreciating the evidence of these witnesses, has rightly observed that these are the witnesses who are working as agricultural labourers, they are from downtrodden class of the society, they are illiterate and ignorant. Therefore, minor contradictions are bound to be there but then that does not affect the trustworthiness of the witnesses.

The learned Special Judge has appreciated the evidence in an appropriate manner. He has discussed at length in para 7 the probable defence put forward by the appellant in support of his case. He has taken into consideration the plea of the victim that a false case is filed against him so that an amount of Rs.45,000/- advanced to the husband of the victim is not required to be returned. The learned Judge has also appreciated that, in cross-examination, the

witness (husband of the victim) has stated that a sum of Rs.10,000/- to Rs.12,000/- was due and payable to him by the appellant by way of labour charges. The amount so fixed by the appellant was not paid.

The learned Judge also appreciated that, to a person, who is employed on an annual labour charges of Rs.10,000/- to Rs.12,000/-, the appellant could not have advanced Rs.45,000/-.

7. This Court is of the opinion that the story put forward by the appellant is not inspiring any confidence inasmuch as, only for the sake of money, a person will not involve his wife and file a false complaint of this nature. Besides, this Court is also convinced that a person will not advance an amount of Rs.45,000/- to a person who is employed on an annual labour charges of Rs.12,000/-.

8. Having appreciated the evidence which is perused in detail from the record and proceedings received by this Court, this Court finds that the learned Judge has rightly recorded the conviction and awarded the sentence. The appeal is found to be without any substance. Hence, it is dismissed.

Sd/-

(RAVI R. TRIPATHI, J.)

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